

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ESTATE OF ADAM CHRISTOPHER
JENSEN, by the Personal Representative
PAULA DOW; and PAULA DOW, an
individual,

Plaintiffs,

vs.

COUNTY OF SNOHOMISH, et al.,

Defendants.

NO. C20-1320-JCC

SNOHOMISH COUNTY’S MOTION FOR
DISMISSAL OF THE STATE PUBLIC
RECORDS ACT CLAIM

**NOTE ON MOTION CALENDAR:
August 6, 2021**

INTRODUCTION AND RELIEF REQUESTED

Defendant Snohomish County now moves for summary dismissal of Plaintiff’s state law Public Records Act (“PRA”) claim against it. Plaintiff’s claim of a PRA violation by the County should be dismissed with prejudice as the claim was brought prematurely. The County has been producing documents in installments to Plaintiff throughout the pendency of the request and the request was not yet closed at the time Plaintiff asserted her PRA claim. It is settled law in Washington state that lawsuits regarding open, active requests are untimely and must be dismissed as a matter of law.

FACTS

A. Request K030697

Plaintiff's claim under the Public Records Act involves a single public records request,¹ which was received by the County and assigned the tracking number K030697. Plaintiff's counsel submitted request K030697 on March 15, 2019. *See* Payne Decl., ¶ 3. This request sought the following records from the Snohomish County Sheriff's Office:

... any and all documents, including but not limited to reports, investigations, medical reports, superforms, booking sheets, dispatch logs, call logs, CAD, notes, memorandum, correspondence, audio or video records, dispatch records, emails, intake forms, letters, photographs, dash camera recording, body camera recording, witness statements, text or voice messages, photographs, diagrams, sketches, incident reports, etc. related to the incident that occurred on or around 9/9/2018, relating to, referring to, and/or regarding Adam Christopher Jensen. We are also seeking any and all attachments and files to the requested documents.

We are also asking for the complete employment files, including but not limited to the personnel file, disciplinary file, action, investigation records, complaints, warnings, employee records, resumes, applications, training, probation, etc. for the three officers at the scene of the shooting and/or involved in the incident. We are also seeking any and all attachments and files to the requested documents.

Please provide a copy of the full investigation file regarding and/or related to Adam Christopher Jensen for the incident that occurred on or around 9/9/2018.

Please also provide a copy of the autopsy report, including any and all attachments, notes, memorandum, recordings, correspondence, statements, and documents regarding Adam Christopher Jensen.

Payne Decl., Ex. A.

The County responded to Plaintiff's counsel's request on March 22, 2019, and informed Plaintiff's counsel that they would receive a first installment on or about May 29, 2019. *Id.*, Ex.

¹ Though Plaintiff states in her Complaint that she "made requests" pursuant to the Public Records Act, Dkt. 1 at 22, the fact section of Plaintiff's Complaint only addresses a single request made by Plaintiff's counsel on March 15, 2019, with numerous "follow ups" as to the status of that request. Under the facts as alleged in Plaintiff's Complaint, there is thus only one public records request at issue in this lawsuit.

1 B. The County advised Plaintiff's counsel that the majority of the documents sought in the request
 2 pertained to a Snohomish County Multi-Agency Response Team, or SMART, investigation.
 3 Since SMART records are maintained by the city of Everett, the County suggested that Plaintiff's
 4 Counsel submit a request to the City of Everett regarding those records. The County indicated it
 5 did have other responsive records and would be providing those records. *See* Payne Decl., Ex. B.

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 7 The County has provided fifteen installments of records responsive to this request. Payne
 8 Decl., ¶ 5. The first installment was provided on March 29, 2019. The fifteenth installment was
 9 provided May 18, 2021. The installments have included hundreds of pages of records responsive
 10 to the request. Payne Decl., ¶¶ 6-20. The sixteenth installment is scheduled to be provided to
 11 Plaintiff's counsel on or before July 27, 2021. *Id.* at ¶ 21.

12
 13 The County has engaged in dialogue with Plaintiff's counsel in an attempt to understand
 14 Plaintiff's request and direct Plaintiff to the correct custodian of the records. Payne Decl., ¶ 4.
 15 Request K030697 is open and on-going and is actively being responded to by the County. *Id.* at
 16 ¶ 23. Due to the large volume of documents requested, the County anticipates continuing to
 17 provide records to Plaintiff on an installment basis. *Id.*

18 **B. Procedural Posture**

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 20 On September 2, 2020, Plaintiff Paula Dow filed her Complaint in this matter. Dkt. 1.
 21 The Complaint contained eleven separate claims for relief, two of which were Public Records Act
 22 claims – one directed at Snohomish County and one directed at “City of Everett Police
 23 Department.” *Id.* Snohomish County now moves for summary dismissal of Plaintiff's public
 24 records act claim against it.
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ISSUE

1. Is Plaintiff's litigation regarding request K030697 untimely given that it was filed while Plaintiff's public records request is still open?

EVIDENCE RELIED UPON

This motion is based upon the Declarations of Jessica Payne, any attachments thereto, and the pleadings and papers on file in the case.

ANALYSIS

A. Summary Judgment Standard.

Summary judgment is appropriate if "there is no genuine issue as to any material fact" and "the moving party is entitled to judgment as a matter of law." CR 56(c). A material fact is one upon which the outcome of the litigation depends in whole or in part. *Morris v. McNicol*, 83 Wn.2d 491, 494, 519 P.2d 7 (1974). "The moving party bears the initial burden of showing the absence of an issue of material fact." *Ames v. City of Fircrest*, 71 Wn. App. 284, 289-90, 857 P.2d 1083 (1993) (citing *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989)).

However, "if a defendant movant meets this burden, the plaintiff must respond by making a prima facie showing of the essential elements of its case." *Id.* at 290. If the plaintiff fails to make a prima facie showing, "there is no genuine issue of fact as to the essential element in question and the trial court should grant the defendant's motion for summary judgment." *Id.* at 290.

A summary judgment procedure may be used to resolve legal issues related to the PRA. *Guillen v. Pierce County*, 96 Wn. App. 862, 866-67, 982 P.2d 123 (1999), *rev'd in part*, 537 U.S. 129, 123 S. Ct. 720, 154 L. Ed. 2d 610 (2003). Washington courts have held that summary judgment is an appropriate procedure in public records cases, and courts may conduct a hearing

1 in public records cases based solely on affidavits. *See Spokane Research & Defense Fund v. City*
 2 *of Spokane*, 155 Wn.2d 89, 106, 117 P.3d 1117 (2005); RCW 42.56.550(3).

3 **B. Plaintiff's Claim Regarding Request K030697 is Untimely.**

4 Because the County had not closed the Plaintiff's counsel's public records request prior
 5 to Plaintiff filing this lawsuit, the request is premature, and should be dismissed. An agency must
 6 engage in a final action regarding a public records request before a requestor may initiate a
 7 lawsuit. *Hobbs v. State*, 183 Wn. App. 925, 936-37 (2014). In *Hobbs*, the agency informed
 8 plaintiff it would be responding to his request in installments. *Id.* Upon receiving a first
 9 installment, Hobbs filed suit. *Id.* In concluding Hobbs' lawsuit was untimely, the court looked to
 10 the plain language of RCW 42.56.550(1) and RCW 42.56.520, both of which refer to a "denial"
 11 of records. *Id.* The Court concluded that the plain language of the statutes requires that "before a
 12 requestor initiate a PRA lawsuit against an agency, there must be some agency action, or inaction,
 13 indicating the agency will not be providing responsive records." *Id.* The *Hobbs* court held that the
 14 denial of a requested records is a prerequisite to filing an action challenging an agency's decision
 15 denying an opportunity to inspect or copy a public record. *Id.*

16 Here, as in *Hobbs*, the County is responding to request K030697 in installments. There
 17 has been no action or inaction by the County indicating it will not be providing responsive records.
 18 To the contrary, the County has provided 15 installments containing hundreds of pages of
 19 documents responsive to request K030697. This request is actively being processed by the County
 20 with the most recent installment made available on May 18, 2021. As a result of the lack of final
 21 action from the County and the ongoing status of this request, Plaintiff's public records litigation
 22 is untimely.
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The Western District of Washington has similarly held. In *Madrid v. Adkins*, 2020 WL 7029835 (W.D. Wash. Nov. 13, 2020), the plaintiff alleged that the City of Arlington had failed to produce certain records, but did not allege that the City had denied plaintiff's record request. The evidence demonstrated that the request was still open and had not been denied at the time of plaintiff's filing of the lawsuit and the parties were in agreement that no final action had occurred. 2020 WL 7029835 at *3. The court held that plaintiff's claims under RCW 42.56.550(1) were premature and should be dismissed. *Id.* The situation is the same here. Plaintiff's public records request is still open and thus the filing of this claim in litigation is premature. Plaintiff's claim regarding K030697 should be dismissed as a matter of law.

CONCLUSION

For the foregoing reasons, the County respectfully requests that Plaintiff's Public Records Act claim be dismissed from this lawsuit, with prejudice, as a matter of law.

DATED this 12th day of July, 2021.

ADAM CORNELL
Snohomish County Prosecuting Attorney

By: /s/ Katherine H. Bosch
DEBORAH A. SEVERSON, WSBA #35603
KATHERINE H. BOSCH, WSBA #43122
ALEX J. WITENBERG, WSBA #50356
Deputy Prosecuting Attorneys
Snohomish County Prosecutor's-Civil Division
3000 Rockefeller Avenue, M/S 504
Everett, WA 98201
Ph: (425) 388-6330 / Fax: (425) 388-6333
deborah.severson@co.snohomish.wa.us
kbosch@snoco.org
alex.witenberg@co.snohomish.wa.us
Counsel for Defendants County of Snohomish, William Westsik and Kevin Pelleboer

DECLARATION OF SERVICE

I declare that I am an employee of the Civil Division of the Snohomish County Prosecuting Attorney, and that I caused to be delivered the foregoing document on the following parties by the methods indicated:

Ada K. Wong
Jordan T. Wada
AKW LAW, P.C.
6100 219th St. SW, Suite 480
Mountlake Terrace, WA 98043
ada@akw-law.com
jordan@akw-law.com
Co-Counsel for Plaintiff

- ☒ ***E-Filed via CM/ECF***
- ☐ E-Mailed
- ☐ Facsimile
- ☐ U.S. Mail, 1st Class
- ☐ Hand Delivery
- ☐ Messenger Service

Isabel S. Johnson
Law Office of Isabel S. Johnson, PLLC
748 Market Street, Suite #15
Tacoma, WA 98402
isabel@isjlaw.com
Co-Counsel for Plaintiff


- ☒ ***E-Filed via CM/ECF***
- ☐ E-Mailed
- ☐ Facsimile
- ☐ U.S. Mail, 1st Class
- ☐ Hand Delivery
- ☐ Messenger Service

Ramsey E. Ramerman
Everett City Attorney's Office
2930 Wetmore Avenue, Suite 10-C
Everett, WA 98201
rramerman@everettwa.gov
Attorney for City of Everett

- ☒ ***E-Filed via CM/ECF***
- ☐ E-Mailed
- ☐ Facsimile
- ☐ U.S. Mail, 1st Class
- ☐ Hand Delivery
- ☐ Messenger Service

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 12th day of July, 2021.



Cindy Ryden, Legal Assistant